



## **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

### **Region 6**

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June 28, 2011

John Tegtmeier  
EIS Document Manager  
Los Alamos, Site Office  
National Nuclear Security  
Administration (NNSA)  
U.S. Department of Energy  
3747 West Jemez Road  
Los Alamos, NM 87544

Dear Mr. Tegtmeier:

In accordance with our responsibilities under Section 309 of the Clean Air Act, the National Environmental Policy Act (NEPA), and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, the U.S. Environmental Protection Agency (EPA) Region 6 office in Dallas, Texas, has completed its review of the Draft Supplemental Environmental Impact Statement (DSEIS) prepared by the National Nuclear Security Administration (NNSA), an agency within the United States Department of Energy (DOE), for the Nuclear Facility Portion of the Chemistry and Metallurgy Research Building Replacement (CMRR) Project at the Los Alamos National Laboratory (LANL) located at Los Alamos, New Mexico.

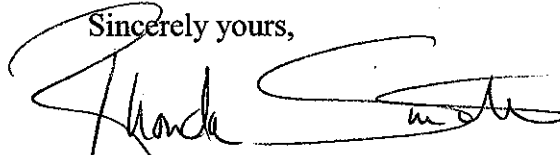
This DSEIS complements the environmental analysis contained within the Final EIS, and subsequent Record of Decision (ROD) published in February 2004, to replace the existing Chemistry and Metallurgy Research Building that was constructed in the early 1950's at the LANL. The replacement facility plan consists of constructing two new buildings. One of the buildings, the Radiological Laboratory/Utility/Office Building, has been constructed and is being outfitted with equipment and furniture. Enhanced safety requirements and updated information has prompted NNSA to re-evaluate the design concept of the second building to insure a more structurally sound design. The proposed Modified CMRR-Nuclear Facility (NF) portion design concept alternative will result in a more structurally sound building than that proposed in the earlier NEPA document. This building is being constructed on an existing and previously disturbed site within the existing LANL boundary. This modification has been addressed in this DSEIS.

EPA rates the Supplemental DEIS as "EC-2" i.e., EPA has "Environmental Concerns and Requests Additional Information in the Final Supplemental EIS (FSEIS)". Detailed comments are enclosed with this letter which more clearly identify our concerns and the informational needs requested for incorporation into the FSEIS.

EPA appreciates the opportunity to review the DSEIS. Please send our office two copies

of the FSEIS when it is sent to the Office of Federal Activities, EPA (Mail Code 2252A), Ariel Rios Federal Building, 1200 Pennsylvania Ave, N.W., Washington, D.C. 20004. Our classification will be published on the EPA website, [www.epa.gov](http://www.epa.gov), according to our responsibility under Section 309 of the CAA to inform the public of our views on the proposed Federal action. If you have any questions or concerns, please contact Michael Jansky of my staff at [jansky.michael@epa.gov](mailto:jansky.michael@epa.gov) or 214-665-7451 for assistance.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Rhonda M. Smith', with a large, sweeping initial 'R'.

Rhonda M. Smith, Chief  
Office of Planning and  
Coordination

Enclosure

**Detailed Comments  
for the  
National Nuclear Security Administration (NNSA)  
United States Department of Energy (DOE)  
Draft Supplemental Environmental Impact Statement (DSEIS)  
Nuclear Facility Portion of the Chemistry and Metallurgy Research Building Replacement  
(CMRR) Project  
Los Alamos National Laboratory (LANL)  
Los Alamos, New Mexico**

The Draft Supplemental Environmental Impact Statement (DSEIS) for the National Nuclear Security Administration (NNSA) of the U.S. Department of Energy (DOE) was developed regarding the proposed construction of the nuclear facilities portion of the Chemistry and Metallurgy Research Building (CMR). The new facility will replace the outdated building that has been in use for 60 years, since it fails to meet current safety standards and building codes. The DSEIS makes clear that any impacts to the public resulting from the construction and operation (including potential accidents) of the CMR will be less than the potential dangers that exist by continuing to use the current facility.

**Environmental Justice**

The DSEIS analyzes impacts on populations within the 50-mile radius surrounding LANL as a whole, which includes eight counties and a population that is projected to be 545,000 by 2030. The demographic analysis should be more detailed in the interest of transparency and in order to present a more complete and accurate picture.

- The demographic data was limited to the average percentage of minority and low-income populations within the 50-mile radius of LANL, as well as the average percentages within the eight counties that comprise the 50-mile radius. The FSEIS should also provide a minority and low-income population analysis with a five, ten, and 20-mile radius.
- It is obvious that those living closest to the facility will be more affected by normal operations or potential accidents at the facility than would those living farther away within the 50-mile radius.
- EPA guidance states, "Environmental effects are often realized in inverse proportion to the distance from the location or site of the proposed action (i.e., the closer the population is to the action, the greater the potential impacts). As a result, an effort should be made to correlate the demographic analysis to the area most likely to bear environmental effects." (*Final Guidance For Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses, April 1998*)
- The total minority population of the 50-mile radius is projected to be 57% by 2030, compared with the State's 65% minority rate; however, by focusing on this 50-mile radius, the DSEIS somewhat distorts the picture because of the percentages of minority

and low-income residents of many of the communities nearer LANL are higher than the averages of the 50-mile radius.

- Most of the population within the eight counties (74%) is concentrated in Sandoval and Santa Fe Counties, and they have 72% of the minority population of all the eight counties. Neither county, however exceeds the State's projected minority percentage of 65%, or the State's low-income percentage of 18.1%.
- Figure 3-9, Minority Populations as a Function of Distance from Technical Area 3 and Technical Area 55 in 2030, depicts minorities and their distance from the facility. The graph is somewhat misleading because minorities are illustrated in an unclear manner and no percentages of minorities in those populations are shown. This could lead one to conclude that the percentage of minorities nearest the facility is low. The FSEIS should provide this information in a clear and concise manner accessible to the average person.
- Figure 3-10, Minority Populations as a Function of Distance from Technical Area 55 in 2030, is also an effort to show minorities and proximity to the facility. It appears that at least 10,000 minority residents live within 15 miles of the facility, and those numbers rise precipitously after the 10-mile point. No real data is provided about the minority residents living near LANL. However, outside of the towns of Los Alamos and White Rock, many residents are low-income Native Americans. The FSEIS should provide this information in a clear and concise manner accessible to the average person.
- The FSEIS should provide a figure depicting the low-income status of residents and their distance from the facility.

The health data provided was extensive, and included data from each of the eight potentially affected counties from 1999 to 2003 (after the Cerro Grande fire). The DSEIS states that cancer rates were lower than those of the U.S., and generally have been less than overall cancer rates of New Mexico. However, Los Alamos, Santa Fe, and Sandoval Counties did exceed the State's average of cancer rates.

- Los Alamos County, where LANL is located, exceeded the State's rates for melanoma, prostate cancer, female breast cancer, and thyroid cancer. Potential cancer risks should have been correlated with proximity of the residents to the facility, since risks to those who live greater than 50 miles of the facility will generally not be as high as the risks to those who live within a few miles of LANL. The FSEIS should provide this correlation.
- Possible impacts to nearby Indian Tribes were not thoroughly examined. These individuals may already experience health problems (such as diabetes or high blood pressure) which would make them more susceptible to any radiological impacts. The FSEIS should provide a more detailed analysis of adverse impacts to Indians.

The risk estimation data could have been presented in a manner more accessible to the general public. In describing the potential risk of developing one latent cancer fatality under various scenarios, the DSEIS did not consistently provide enough information. Frequently this

information was well presented, as in this example, "... the estimated probability of this maximally exposed person developing a latent fatal cancer from radiation exposure associated with 1 year of LANL operations is about *1 in 3 million*." Often, however, this risk estimation information was presented with mathematical formulas in a manner that the average person would not understand. The FSEIS should provide data and use language that is accessible to the average person.

### **Tribal Concerns**

The proposed project has the potential to affect several Indian Pueblos, including but not limited to effects on their governmental interests (such as emergency response to spills), natural resources (such as downstream pollution of streams and lakes from stormwater runoff, spills or transportation accidents) and their citizens. A significant amount of Indian country is located in the vicinity of LANL, and the San Ildefonso Pueblo borders LANL. The Pojoaque, Cochiti and Santa Clara Pueblos, Ohkay Owingeh Pueblo, Tesuque Pueblo, Jemez Pueblo, etc. are less than 30 miles away.

- The DSEIS does not adequately address potential effects upon Indian tribes, perhaps because the projected percentage of Native Americans within the 50-mile radius is 10%, while the percentage of Native Americans within all of New Mexico is 16%, but within certain areas, their percentages are high. The FSEIS should provide a more detailed analysis of adverse impacts to Native Americans.
- The FSEIS should provide more detailed maps depicting all tribal areas within the 50-mile radius.
- As detailed above, the proximity of many of the tribes to LANL and proposed transportation routes results in potentially significant adverse effects to Native Americans and tribal communities. As a federal agency, the DOE has a duty to consult with recognized Tribes whenever its actions may potentially impact those Tribes or tribal interests.
- The DOE should take immediate steps to initiate consultation with each of the potentially affected tribal governments on issues that may concern them, including but not limited to transportation, waste disposal, potential to pollute tribal waters, need for emergency response readiness, and other topics identified by the Tribes. As appropriate, the FSEIS should address topics of concern to tribes and these consultations should be documented.
- Special public outreach efforts should be undertaken to ensure that tribal members understand the proposed project and its implications.

The DSEIS states that the NNSA does arrange site visits with tribal representatives to solicit their concerns when a project is proposed. Normal procedures will be followed under the National Historic Preservation Act (NHPA), and the following tribes have been notified about the project and have been urged to comment on any concerns they may have:

- Eight Northern Indian Pueblos Council,
- Mescalero Apache Tribe,
- Pueblo of Acoma,
- San Ildefonso Pueblo,
- Pojoaque Pueblo,
- Cochiti Pueblo,
- Santa Clara Pueblo, and
- Jemez Pueblo

However, the requirement to consult under the NHPA is separate and different from the broader duty to consult government-to-government that arises when federal agency actions may affect tribal interests. DOE should pursue consultation in a manner consistent with the Presidential Memo dated November 5, 2009, which states: "...The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In recognition of that special relationship, pursuant to Executive Order 13175 of November 6, 2000, executive departments and agencies (agencies) are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes."